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III. Claims 11, 25 and 30, drawn to a pair of plants each transformed with a gene encoding a portion of a protein conferring seedless or embryo-less seed phenotype.

The Examiner alleged that the inventions are distinct, each from the other, because they are unrelated. The Examiner stated that the inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects, referring to MPEP §806.04, and MPEP §808.01. In the instant case, the Examiner alleged that the different inventions have different functions and different effects. The Examiner also alleged that the genes influencing phenotype of vegetative or storage organs, such as genes encoding individual subunits of a heterotetrameric ADP-glucose pyrophosphorylase, as required by Group I, are not required by any other group. The Examiner alleged that the genes encoding cell ablation of Groups II and III are not required by Group I. The male organ-specific promoters and methods for evaluating male sterility of Group III. The embryo- or seed-specific promoters and methods for evaluating embryo-less seed of Group III are not required by any other group.

Alleging these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, classification, and fields of search, the Examiner asserted that restriction for examination purposes as indicated is proper.

In response, applicants hereby elect, with traverse, Group I, claims 1-2, 5-6, 8-9, 12-16, 19-20, 22-23 and 26-29.

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However, applicants admit to some confusion.

The Examiner's allegation that "the genes influencing phenotype of vegetative or storage organs, such as genes encoding individual subunits of a heterotetrameric ADP-glucose pyrophosphorylase, as required by Group I, are not required by any other group," deserves some clarification. Applicants find it hard to see how the limitation of Group I are not required by Groups II and III in view of the fact that certain claims of Groups II and III depend on, and incorporate the limitations of, claim 1 which is in Group I.

The December 1, 2000 Restriction Requirement was discussed during a January 11, 2001 telephone conference between Examiner Fox and the undersigned, during which the Examiner agreed to reconsider the Restriction Requirement. The Examiner also stated that he would consider converting the December 13, 2000 Restriction Requirement into an election requirement, thus, examining applicants' elected group and upon finding that group allowable examining the other two groups.

Applicants respectfully point out that where there is generic claim to all of the other claims, restriction is not proper. Accordingly, pursuant to M.P.E.P. §809.02(c), applicants look forward to a full examination of all of the pending claims 1-30 in the subject application.

Furthermore, applicants point out that restriction may be required under 35 U.S.C. §121 only if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made

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without serious burden.

The inventions of Groups I, II, and III are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subjects disclosed. The inventions of Groups I, II and III all relate to protein complementation in transgenic plants. The Examiner's grouping of the claims merely separates specific examples of such protein complementation into different groups. Such arbitrary grouping is not proper and the restriction should not be maintained.

Furthermore, under M.P.E.P. § 803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: 1) the invention must be independent and distinct, **and** 2) there must be a serious burden on the Examiner if restriction is not required.

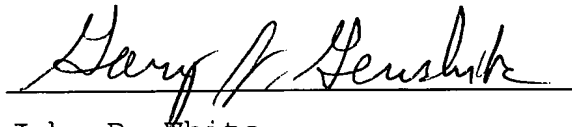
Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction is not required, because a search of the prior art relevant to any one of Groups I-III would necessarily turn up prior art relevant to each of the three groups. Since there is no burden on the Examiner to examine Groups I-III together in the subject application, the Examiner must examine the entire application on the merits.

In view of the foregoing, applicants maintains that restriction is not proper under 35 U.S.C. § 121 and respectfully requests that the Examiner reconsider and withdraw the requirement for restriction.

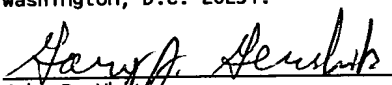
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No fee is deemed necessary in connection with the filing of this Response. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.	
	<u>11/12/01</u>
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